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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

HDMI LICENSING ADMINISTRATOR, INC.,

Plaintiff,

v.

AVAILINK INC.

Defendant.

CASE NO.: 4:22-cv-06947-HSG

**DECLARATION OF KERRY B.  
BROWNLEE IN SUPPORT OF MOTION  
TO RESCHEDULE CASE MANAGEMENT  
CONFERENCE AND HEARING ON  
MOTION TO DISMISS PURSUANT TO  
LOCAL RULE 6-3**

Complaint Filed: November 7, 2022

1 I, Kerry B. Brownlee, declare as follows:

2 1. I am an attorney with the law firm Epstein Drangel LLP, counsel for Plaintiff HDMI  
3 Administrator, Inc. (“Plaintiff” or “HDMI LA”) in the above-referenced action, and I make the  
4 statements set forth herein based on my personal knowledge.

5 2. On November 7, 2022, Plaintiff filed its Complaint (*Dkt. No. 1*).

6 3. Defendant executed a Waiver of Service of Summons sent by Plaintiff’s counsel on  
7 January 12, 2023, thereby making its deadline to file an answer or motion pursuant to Fed. R. Civ. P.  
8 12 ninety (90) days therefrom (i.e., up to and including April 12, 2023).

9 4. The Initial Case Management Conference (“CMC”) was originally set for February 14,  
10 2023 (*Dkt. No. 11*), and the parties sought the first adjournment thereof, given that Defendant had not  
11 yet retained local counsel, and the parties were in discussions regarding whether or not the dispute  
12 could be resolved among them (*Dkt. No. 13*), which was granted by the Court, and adjourned the CMC  
13 to April 25, 2023 (*Dkt. No. 15*).

14 5. On April 12, 2023, Defendant filed a partial motion to dismiss the Complaint  
15 (specifically, Counts II-IV) (*Dkt. No. 30*) (the “MTD”).

16 6. On April 25, 2023, the Court held a telephonic hearing wherein it continued the CMC  
17 until the hearing date on Defendant’s MTD (July 20, 2023) (*Dkt. No. 39*).

18 7. On May 12, 2023, the parties filed a second stipulated request to adjourn the CMC and  
19 hearing on Defendant’s MTD until July 27, 2023 (*Dkt. No. 43*) in order to permit the parties time to  
20 complete their in-person mediation, scheduled for July 12, 2023, and such stipulation was granted by  
21 the Court.

22 8. On July 12, 2023, the parties participated in an in-person mediation in San Jose,  
23 California before John Bates, Esq. (the “Mediator”), after which Plaintiff agreed to discuss the terms of  
24 Defendant’s settlement proposal internally, and with potentially affected parties, at an upcoming  
25 meeting on August 8, 2023.

1           9.       In order to permit the parties additional time to explore if settlement was possible before  
2 the CMC, and for the August 8, 2023 meeting to occur, the parties filed a third joint stipulated request  
3 to extend the CMC and hearing on Defendant's MTD to October 12, 2023.

4           10.      On August 22, 2023, the parties had a follow-up call among counsel and the Mediator  
5 to further discuss the prospect of settlement and during which Plaintiff set forth a counter offer.

6           11.      On August 23, 2023, Defendant rejected Plaintiff's counter offer, and it became clear  
7 that the parties are at an impasse regarding settlement.

8           12.      On September 1, 2023, right before the Labor Day holiday, Defendant filed an Answer  
9 and Counterclaims against Plaintiff (*Dkt. No. 49*) (the "Counterclaims").

10          13.      On September 13, 2023, the parties filed a stipulated request to extend Plaintiff's  
11 deadline to respond to Defendant's Counterclaims until October 23, 2023 (*Dkt. 50*), which was granted  
12 by the Court (*Dkt. No. 51*).

13          14.      After seeking the extension request, and after conferring further with its counsel, and  
14 additional co-counsel specializing in antitrust matters, Plaintiff decided that it is going to move to  
15 dismiss the Counterclaims, and informed Defendant's counsel as such via email on September 18,  
16 2023.

17          15.      In my email of September 18, 2023, I informed Defendant's counsel, Vincent Filardo,  
18 Jr., of Plaintiff's plan to file a motion to dismiss (the "Anticipated Motion to Dismiss"), and asked if  
19 Defendant would consent to an adjournment of the CMC and hearing on Defendant's MTD until after  
20 Plaintiff's Anticipated Motion to Dismiss is fully briefed on November 13, 2023, and advised  
21 Defendant's counsel of the next available law and motion date on the Court's calendar (December 14,  
22 2023).

23          16.      On September 19, 2023, I received a response from Defendant's counsel wherein he  
24 advised, in relevant part, as follows: "[a]t this juncture the hearing on the MTD and CMC will be  
25 delayed for nearly 3 months. HDMI's putative motion to dismiss Availink's Counterclaims is not a  
26 reasonable basis to further delay the proceedings and the requested delay is not supported by federal  
27 practice and procedure. Availink disagrees that it is necessary or would be efficient to further postpone  
28

1 the MTD hearing and CMC in light of that yet to be filed motion. Availink will not consent to any  
2 further adjournments.”

3 17. On September 19, 2023, I responded to Defendant’s counsel’s email and indicated, in  
4 relevant part as follows: “in Count II of Availink’s Counterclaims, it includes a claim for cancellation  
5 of U.S. Trademark registrations 3,268,924 and 3,442,135. The MTD seeks dismissal of HDMI LA’s  
6 direct and contributory trademark claims. Under 15 U.S.C. § 1119, a party only may seek cancellation  
7 ‘[i]n any action involving a registered mark’. Therefore, to the extent that Availink’s MTD is  
8 successful, that could have the potential to impact Availink’s standing to bring Count II. *See San Diego*  
9 *Cty. Credit Union v. Citizens Equity First Credit Union*, 2020 U.S. Dist. LEXIS 179341 (S.[D]. Cal.  
10 September 29, 2020). Given this, and for the sake of efficiency, among other things, HDMI LA  
11 believes that it is most practicable for the Court to consider all of the issues together at one hearing.  
12 While Availink has indicated it ‘disagrees that it is necessary or would be efficient to further postpone  
13 the MTD hearing and CMC in light of that yet to be filed motion’, it has not provided any factual basis  
14 in support of the proposition that holding a hearing on October 12, 2023 on the MTD, and then a  
15 second hearing in or about December 2023 on Plaintiff’s motion to dismiss would be the best use of  
16 the parties’ and Court’s time and resources.”

17 18. In my September 19, 2023 email, I also indicated that HDMI LA would proceed by way  
18 of a motion to reschedule, given that Defendant does not consent to Plaintiff’s request.

19 19. Plaintiff’s request will not impact any other deadlines, other than the parties’ deadline to  
20 submit their updated case management statement.

21  
22 I declare under penalty of perjury that the foregoing is true and correct.  
23

24 DATED: September 20, 2023

**EPSTEIN DRANGEL LLP**

By: s/ Kerry B. Brownlee

Kerry B. Brownlee

*Attorney for Plaintiff*

*HDMI Licensing Administrator, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2023, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to the email addresses registered in the CM/ECF system.

DATED: September 20, 2023

By: s/ Kerry B. Brownlee  
Kerry B. Brownlee  
Epstein Drangel LLP

*Attorney for Plaintiff*  
*HDMI Licensing Administrator, Inc.*